

## STATE OF SOUTH CAROLINA

## BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2017-370-E, 2017-207-E, and 2017-305-E

Joint Application and Petition of South	)	
Carolina Electric & Gas Company and	)	
Dominion Energy, Incorporated for	)	
Review and Approval of a Proposed	)	
Business Combination between SCANA	)	
Corporation and Dominion Energy,	)	
Incorporated, as May Be Required, and	)	
for a Prudency Determination Regarding	)	
the Abandonment of the V.C. Summer	)	
Units 2 & 3 Project and Associated	)	
Customer Benefits and Cost Recovery	)	REPLY IN SUPPORT OF MOTION TO
Plans	)	STRIKE SCE&G'S NOTICE OF
	)	CHANGE IN SECURITY RATING
Friends of the Earth and Sierra Club,	)	
Complainant/Petitioner v. South Carolina	)	
Electric & Gas Company,	)	
Defendant/Respondent	)	
	)	
Request of the Office of Regulatory Staff	)	
for Rate Relief to South Carolina Electric	)	
& Gas Company's Rates Pursuant to S.C.	)	
Code Ann. § 58-27-920	)	
	)	

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The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") file this reply in support of their motion to strike South Carolina Electric and Gas Company's ("SCE&G" or the "Company") notice of change in security rating (the "Motion"). SCE&G's response to the Motion is further evidence that SCE&G should not be allowed to paper the consolidated dockets with self-serving filings that distort the issues and distract the Commission.

Rather than respond to the substance of the Motion, SCE&G begins its response by blatantly misreading it. CCL and SACE *never suggested* that it was inappropriate for

SCE&G to file a notice of security rating change and any news releases from the rating agencies in Docket No. 89-230-E/G. *See* Motion to Strike at 2. (SCE&G stated that its Notice was filed in compliance with Order No. 92-931 in Docket No. 89-230-EG, which requires SCE&G to notify the Commission of any change in a security rating. *That docket is separate from and entirely unrelated to these consolidated dockets, which means filing the notification in [] dockets [2017-370-E, 2017-207-E, and 2017-305-E] is entirely inappropriate.*”).

Yet SCE&G uses this fictional argument as an excuse to insert lengthy excerpts from the ratings agency press releases in their filing, again without a sponsoring witness. The excerpts are clearly selected to insinuate that the Commission must approve the Dominion/SCANA merger as proposed or bear the blame for any further downgrades in SCE&G’s credit ratings: the Company takes pains to highlight the portions of the ratings agency press releases that talk about potential benefits of the merger, but fails to mention other portions of the releases that make clear that the credit volatility SCE&G is experiencing is rooted in its decision to abandon the nuclear expansion project. *See, e.g.*, Fitch Aug. 8, 2018 Press Release, *available at* <https://www.fitchratings.com/site/pr/10040895> (“SCE&G’s credit profile is constrained by the heightened regulatory and legislative risk related to the abandonment of its nuclear expansion project.”). There is absolutely nothing in Order 92-931 that requires or authorizes filing the notice in the consolidated dockets, and the Commission should strike the filing from these dockets.

The second argument advanced in the response—that SCE&G was required to file the notice in Dockets 2017-207-E, 2017-305-E, and 2017-370-E so as not to violate *ex parte* communication restrictions—is an extreme position that should be rejected by the

Commission. First, it implies that every filing required to be filed in any Commission proceeding that is in some way related to another Commission proceeding must be filed in both dockets. This practice would quickly make dockets unwieldy, with parties overwhelmed by filings and no clear line to distinguish when a filing is “relevant” in multiple dockets. If a party does not have enough time to develop testimony in the fuel cost docket, for example, but completes an analysis on a relevant issue in time to include in comments in the Integrated Resource Plan docket, should the party be allowed to automatically file the comments in the fuel cost docket too?

Second, if the Commission adopts this position, it will put non-utility parties at a severe disadvantage. The vast majority of Commission Orders that require filings are directed to applicants, which are almost always investor-owned utilities. Adopting SCE&G’ suggested reading of the *ex parte* rules would provide those utilities more opportunities to submit filings without affording other parties the same opening.

Third, SCE&G’s response incorrectly assumes that security ratings changes are “reasonably be expected to become an issue” in consolidated Dockets 2017-370-E, 2017-207-E, and 2017-305-E. S.C. Code § 58-3-260. As set out in the Motion, the Base Load Review Act authorizes recovery of only “prudently incurred” costs. To the extent SCE&G and its managers incurred costs imprudently, ratepayers have no legal obligation to pay those costs, regardless of the consequences for SCE&G’s shareholders and managers.

Fourth and finally, the *ex parte* rules were enacted following revelations that utility attorneys regularly spoke with and advised the Commission off the record about matters it was in the process of adjudicating, out of the presence of the other parties in the

proceedings.<sup>1</sup> The rules are intended to prevent one-sided communications with the Commission. That is clearly not a concern here, where the filing in Docket 89-230-E/G affords interested parties notice and the opportunity to comment or otherwise participate before the Commission.

CCL and SACE find it curious that SCE&G point to the *ex parte* communication rules as requiring the filing of the Notice in these dockets when they have not filed in Dockets 2017-207-E, 2017-305-E, and 2017-370-E other filings that more clearly bear on the issues in the proposed SCANA/Dominion merger. For example, SCE&G touts as a benefit of the proposed customer benefits plan, but not of the Base Request option, a 3.5% (initially calculated to be 1.5%) rate reduction over 20 years as a result of savings from the Tax Cuts and Jobs Act.<sup>2</sup> Yet SCE&G neglected to file in Dockets 2017-207-E, 2017-305-E, and 2017-370-E any of its comments or responses in Docket 2017-381-A, regarding the Office of Regulatory Staff's Petition for an Order Requiring Utilities to Report the Impact of the Tax Cuts and Jobs Act. In those filings, SCE&G made clear that it "is committed to ensuring that its retail electric and natural gas customers receive the full benefit of the new federal tax law and that the benefits derived from the tax law will be effective as of January 1, 2018. Moreover, the Company's commitment is not conditional [on any merger between SCANA and Dominion]." SCE&G Response to Motion of ORS, April 16, 2018. In other words, SCE&G fully admitted that the savings

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<sup>1</sup> Ellerbe William H., *Toward Legitimacy through Collaborative Governance: An Analysis of the Effect of South Carolina's Office of Regulatory Staff on Public Utility Regulation*, 18 Mich. Telecommunications & Technology Law Rev. 219, 224 (2011). <http://repository.law.umich.edu/mttlr/vol18/iss1/6>.

<sup>2</sup> Application at p. 41, Exhibit 12, Exhibit 10 at p. 2; Chapman Direct Testimony at pp. 12, 14-15; Response to ORS Audit Information Request 1-119.

from the Tax Cuts and Jobs Act are actually *not* a benefit of the Dominion merger, and are available to customers *no matter what happens in the consolidated dockets*.

In another filing in Docket 2017-381-A, SCE&G vehemently opposed a request from ORS that all utilities be required to report by June 30, 2018 “the estimated savings, and when and how, [SCE&G] proposes to return these tax savings to their ratepayers” and be required to submit revised tariffs “reflecting the estimate savings attributed to the tax benefits of the Act” by July 31, 2018. SCE&G Response to ORS May 23, 2018 Motion, June 4, 2018. SCE&G apparently did not feel compelled to provide extra notice to parties in Dockets 2017-207-E, 2017-305-E, and 2017-370-E and the opportunity “to participate in the communication” about its opposition to quantifying the savings from the Tax Cuts and Jobs Act that are due to customers regardless of whether the merger closes.

The Company’s failure to file these Docket 2017-381-A filings in the consolidated dockets contradicts their position that the *ex parte* rules require filing the notice of change in security rating, and the failure is further evidence that their filing of the notice of change in security rating was a self-serving attempt to get documents into the record without a sponsoring witness.

For the reasons set forth above, the Commission should to strike the notification of change in security rating filed by SCE&G in the above-captioned dockets.

Respectfully submitted this 11<sup>th</sup> day of September, 2018.

A handwritten signature in blue ink, appearing to read "William C. Cleveland".

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